

Call to Order:

The meeting was called to order at 8:06 p.m. Present were Chair, Joan Duff, and members Vincent Chiozzi, Mark Yanowitz, Ms. Anderson and John McDonnell; also present was Jacki Byerley, Planner.

It should be noted that the discussion on the Master Plan Update did not occur.

15 Elm Street (Century Bank):

The Board opened the public hearing that was continued from the May 10th meeting on an application by Century Bank and Trust Company on property owned by DAZ, LLC for a Special Permit for a Major Non-Residential Project located at 15 Elm Street. Ms. Byerley reviewed a memo to the Board dated May 20th which included staff's response to concerns raised by Attorney Mark Johnson regarding the pedestrian access, Mass General Law Chapter 21 Section 17C Public use of land for recreational, conservation, scientific, educational and other purposes Landowner's liability limited; exception. Ms. Byerley also reviewed the lighting, the fencing including two openings and pictures of existing Century Banks throughout Massachusetts without fencing around the property line. Attorney Mark Johnson representing the applicant, expressed concerns regarding liability if the Bank were to allow access onto Verizon's site and the parking lot owned by Musgrove without permission from the property owners. Mr. McDonnell suggested that Board consider a condition to indemnify and hold the applicant harmless of liability. The Board questioned where the openings in the fence would be. Ms. Byerley showed the openings on a plan to the Board. Attorney Johnson reiterated his opinion regarding liability concerns, and the rights to trespass. Ms. Byerley noted that she has not seen any access agreement with 15 Barnard Street. Chris Young of 60 Whittier Street noted that Margaret Pustell who was chair of the League for Women Voters was an advocate for pedestrian access/linkages between neighbors. Ms. Young noted she uses the pedestrian access around town and is opposed to closing/not allowing any pedestrian access. Mr. Yanowitz noted that there is a larger issue at stake when other applications are before the Board; the Board needs a clear understanding/direction for public access and liability issues. Attorney Johnson handed the Board a draft condition if they insist on public access. Mr. McDonnell noted that in his opinion if the Board forces public access on private property it is a taking of that property and gave his opinion of liability concerns that property owners can face if access is allowed. Bob Marsh of the Community Path Committee read the 1997 General By-law Section 6.8.2 Pedestrian and Bicycle Paths and noted that not requiring public access would be a violation of the town by-laws. Mr. McDonnell noted that the Board should be encouraging businesses to move Downtown and he feels that forcing public access on business owners is inconsistent with the goal of a vibrant downtown. On a motion by Ms. Anderson seconded Mr. Chiozzi to close the public hearing on an application by Century Bank and Trust Company on property owned by DAZ, LLC for a Special Permit for a Major Non-Residential Project located at 15 Elm Street
Vote: Unanimous (5-0)

15 Elm Street (Century Bank):

The Board took up the deliberations on an application by Century Bank and Trust Company on property owned by DAZ, LLC for a Special Permit for a Major Non-Residential Project located at 15 Elm Street. Ms. Byerley reviewed her memo to the Board dated May 20, 2011 which

15 Elm Street (Century Bank) (cont.):

included suggested wording from Attorney Johnson that he handed out at the meeting. Ms. Byerley suggested changing condition # 25 to read:

The applicant shall install a gate of at least 4 feet in width in the fence it is erecting at the rear side property line between 15 Elm Street and 24 Post Office Ave Square to provide access to the 24 Post Office Square property. The gate shall be open during normal business hours of the bank. The Planning Division shall notify the owner 24 Post office Ave Square that a gate will be placed in the fence line adjacent to their property.

The applicant shall install a gate of at least four (4) feet in width in the fence it is erecting at the rear side property line between 15 Elm Street and 27 Elm Street to provide access to the 27 Elm Street property. The gate shall remain open during normal business hours of the bank. The Planning Department shall notify the owner of 27 Elm Street that a gate will be placed in the fence line adjacent to their property. The applicant may lock the gate after the bank's normal business hours.

A detailed discussion by the Board on liability, pedestrian access, and the Master Plan followed. On a motion made by Ms. Anderson seconded by Mr. Chiozzi the Board voted to approve the application by Century Bank and Trust Company on property owned by DAZ, LLC for a Special Permit for a Major Non-Residential Project located at 15 Elm Street subject to the 25 conditions outlined in Ms. Byerley's memo dated May 20, 2011 with the following changes:

Condition # 11 in the first sentence delete the "s" on the word constructions;

Condition # 17 shall read: Lighting fixtures on the building shall be shielded and directed inward toward the site, and shall conform in number and location to the Preliminary Exterior Lighting plan approved in general condition 2.1. of the Condition of this Permit;

Condition # 5 add sentence to the end which shall read: This condition does not apply to site Assessment, including environmental wells, test borings, removal of exterior siding to expose the bricks, opening walls and floors and ceilings for the purposes of design and project evaluation;

Condition # 24 add sentence to end which shall read: The following applies only to exterior lighting;

Condition # 25 1st paragraph shall read:

The applicant shall install a gate of at least 4 feet in width in the fence it is erecting at the rear side property line between 15 Elm Street and 24 Post Office Ave Square to provide access to the 24 Post Office Square property. The gate shall be open during normal business hours of the bank. The Planning Division shall notify the owner 24 Post office Ave Square that a gate will be placed in the fence line adjacent to their property.

Condition # 25 shall read 2nd paragraph:

The applicant shall install a gate of at least four (4) feet in width in the fence it is erecting at the rear side property line between 15 Elm Street and 27 Elm Street to provide access to the 27 Elm Street property. The gate shall remain open during normal business hours of the bank. The Planning Department shall notify the owner of 27 Elm Street that a gate will be placed in the fence line adjacent to their property.

The applicant may lock the gate after the bank's normal business hours. **Vote:** (4-1) Ms. Anderson, Mr. Yanowitz, Ms. Duff, and Mr. Chiozzi voting yes; and Mr. McDonnell and voting no. Mr. McDonnell explained his no vote as an objection to the Board's condition of approval to requiring pedestrian access through the site.

Adjournment: Prior to adjourning the meeting the Board discussed the site walk scheduled for May 27th at 7:30 am. The meeting was adjourned 9:27 p.m.